S.B.CIVIL WRIT PETITION NO.8463/2007
(Bhanwarlal Kansara Vs. UOI & ors.)

Date of order : 19th December 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.M.A.Siddiqui for the petitioner

By way of this writ petition, the petitioner seeks to challenge the memorandum dated 23.11.2007 (Annexure-5) that reads as under:-

> "WHEREAS, CBI, ACB, Jaipur registered a Case No.20/2002 against Shri B.L.Kansara, JTO, Rajasthan Telecom Circle, Jaipur, for demanding and accepting bribe of Rs.600/- for providing STD PCO to Shri Brijesh Kumar (the complainant). The Spl. Judge for CBI Cases vide their Judgment dated 07.9.2007, convicted and sentenced Shri B.L.Kansara, JTO, to undergo 2 years Rigorous Imprisonment (RI) and file of Rs.2000/-, in default of payment of fine to further undergo 2 months additional imprisonment under Section 7 of PC Act. Further, the accused has to undergo 3 years Rigorous Imprisonment (RI) and a fine of Rs.5000/-, in default of payment of fine to further undergo 3 months additional imprisonment under Section 13(1)(d) read with 13(2) of PC Act, 1988. Both the sentences shall run concurrently.
>
> 2. AND WHEREAS, the undersigned proposes to award an appropriate penalty under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, on the ground of conduct which has led to his conviction and account of gravity of criminal charges.
>
> 3. AND WHEREAS, before coming to a decision about the quantum of penalty Shri B.L.Kansara, JTO, is hereby given an opportunity to explain the circumstances, why penal action should not be taken against him in pursuance of the provisions of Rule 19 of CCS (CCA) Rules, 1965 as the undersigned has come provisionally to the conclusion that Shri B.L.Kansara, JTO, is not a fit person to be retained in service.

> 4. AND WHEREAS, Shri B.L.Kansara, JTO is hereby given an opportunity of making a representation on the proposed penal action. Any representation, which he may wish to make against the proposed penal action, will be considered by the undersigned. Such representation, if any, shall be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this Memorandum by Shri B.L.Kansara, JTO, failing which further action will be taken as per rules.
>
> The receipt of this Memorandum shall be acknowledged by Shri B.L.Kansara, JTO, Rajasthan Telecom Circle, Jaipur."

Having perused the memorandum aforesaid, this Court is clearly of the view that nothing prevented the petitioner from stating reply to the said memorandum as called upon to do so and to take all the objections in accordance with law before the authority concerned.

Learned counsel for the petitioner submits that the petitioner has received the said communication only on 12.12.2007. If that being so, the petitioner could definitely state his reply to the authority concerned and could obviously make all the submissions and take all the objections as he seeks to take against the proposed action and in his defence.

Challenge to the said memorandum cannot be said to be anything else but a challenge to the show cause notice and this Court is not inclined to entertain the matter in extra-ordinary writ jurisdiction in that regard.

Exercise of writ jurisdiction is, therefore, refused. The writ petition stands rejected.

(DINESH MAHESHWARI),J.

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